

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION
CASE NO. 1:22-cv-24023-SCOLA/GOODMAN**

KENNETH C. GRIFFIN,

Plaintiff,

v.

INTERNAL REVENUE SERVICE and U.S.
DEPARTMENT OF THE TREASURY,

Defendants.

**PLAINTIFF'S *UNOPPOSED* MOTION TO MODIFY SCHEDULING ORDER TO
FILE AMENDED COMPLAINT**

Plaintiff Kenneth C. Griffin, by and through his undersigned counsel and pursuant to Federal Rules of Civil Procedure 16(b)(4) and Local Rule 7.1, respectfully moves this Court to modify the Scheduling Order (ECF No. 30) to allow Mr. Griffin to file an amended complaint on or before October 27, 2023.

1. On December 13, 2022, Mr. Griffin initiated this action by filing a complaint against Defendants alleging that IRS Personnel “exploited the IRS’s willful failure to establish adequate administrative, technical, and physical safeguards for the IRS’s data and records systems” and then “misappropriate[d] confidential tax return information for the highest earning U.S. taxpayers, including Mr. Griffin, and then unlawfully disclosed those materials to ProPublica for publication.” (ECF No. 1, ¶ 3.)

2. Defendants moved to dismiss Mr. Griffin’s complaint on April 25, 2023, arguing that his allegations were speculative, implausible, and that ProPublica’s source might have been

“a foreign government hostile to the United States,”¹ and by June 21, 2023, Defendants’ motion to dismiss was fully briefed. (*See* ECF Nos. 23, 28, and 31).

3. On September 29, 2023, however, the United States filed a criminal information against an IRS contractor, Charles Edward Littlejohn, charging him with stealing and unlawfully disclosing the confidential return information of “thousands of the nation’s wealthiest people” to a news organization for publication. *See United States v. Charles Edward Littlejohn*, 1:23-cr-00343-ACR ECF No. 1 (D.D.C.) (the “Criminal Information”).² The government has also informed Mr. Griffin that this alleged unlawful disclosure included his confidential return information, as alleged in his complaint. Consequently, on October 1, 2023, Mr. Griffin filed a *Notice of Supplemental Authority / Potential Mootness* (ECF No. 37) advising the Court of this development and its potential implication on Defendants’ pending motion to dismiss.

4. On October 6, 2023, in response to and in accordance with this Court’s Order (ECF No. 38), Mr. Griffin informed this Court that “[i]n light of Defendants’ continued refusal to withdraw their Motion to Dismiss . . . , [Mr. Griffin] will likely seek leave to amend his complaint in the coming days and, subject to this Court’s authorization and approval, [Mr. Griffin] will be in a position to file an amended complaint no later than October 27, 2023.” (*See* ECF No. 40).

5. The deadline to amend the pleadings under the current Scheduling Order was July 11, 2023. (*See* ECF No. 30.). Good cause exists to modify the current Scheduling Order to allow Mr. Griffin to file an amended complaint on or before October 27, 2023, because the government’s Criminal Information was not available to Mr. Griffin until after the current deadline

¹ *See* ECF No. 23.

² On October 12, 2023, Charles Littlejohn pled guilty to the charge in the Criminal Information. *See United States v. Charles Edward Littlejohn*, 1:23-cr-00343-ACR (D.D.C.).

to amend the pleadings already passed, and the facts and inferences provided by the Criminal Information supports additional claims against Defendants, corroborates the existing claims in Mr. Griffin's complaint against Defendants, and expressly belies and moots the primary arguments Defendants raised in their motion to dismiss.

6. Accordingly, Mr. Griffin respectfully requests that this Court modify the current Scheduling Order to allow Mr. Griffin to file an amended complaint on or before October 27, 2023.

CERTIFICATE OF GOOD FAITH CONFERENCE

Pursuant to Local Rule 7.1(a)(3), counsel for Mr. Griffin conferred with counsel for Defendants on October 11, 2023, and counsel for Defendants advised that Defendants do not oppose the relief requested herein.

Dated: October 12, 2023

Respectfully submitted,

By: /s/ Jason D. Sternberg

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this 12th day of October, 2023, I filed a copy of the foregoing document with the Clerk of Court using the CM/ECF electronic filing system, which will send notification to all counsel of record.

By: /s/ Jason D. Sternberg
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